

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MICHAEL P. WHITE and U.S. POSTAL SERVICE,
BUSTLETON STATION, Philadelphia, Pa.

*Docket No. 97-1766; Submitted on the Record;
Issued March 25, 1999*

DECISION and ORDER

Before MICHAEL J. WALSH, GEORGE E. RIVERS,
MICHAEL E. GROOM

The issue is whether appellant has more than a five percent permanent impairment of his left hand, for which he received a schedule award.

Appellant's notice of traumatic injury, filed on February 25, 1992, was accepted by the Office of Worker's Compensation Programs for a fracture of the left index finger, which occurred when appellant was rebuilding collapsible shelving at work. On February 16, 1995 the Office issued a schedule award for five percent permanent impairment of appellant's left hand, running from September 13 through December 7, 1994 for a total of \$5,785.85. This impairment rating was based on the review of an Office medical adviser following review of a report obtained from Dr. Noubar A. Didizian.

Appellant disputed the amount of the schedule award and requested an oral hearing, which was held on September 6, 1995. The hearing representative remanded the case because a report from appellant's treating physician, Dr. David Weiss, an osteopathic practitioner, was not considered by the Office in reaching its determination. The hearing representative directed the Office medical adviser to evaluate Dr. Weiss' report, which found a 22 percent impairment and to arrange for an impartial medical examiner to resolve any conflict.

On remand the Office referred appellant to Dr. Joseph A. Fabiani, a Board-certified orthopedic surgeon, finding a conflict in medical opinion as to the extent of impairment due to appellant's accepted injury. Dr. Fabiani found no more than a three to four percent permanent impairment. On March 26, 1996 the Office denied any additional schedule award, based on Dr. Fabiani's March 5, 1996 report.

Appellant again requested a hearing, which was held on November 21, 1996. On January 27, 1997 the hearing representative denied appellant's claim for an additional schedule award.

The Board finds that this case is not in posture for decision.

Under section 8107 of the Federal Employees' Compensation Act¹ and section 10.304 of the implementing federal regulations,² schedule awards are payable for the permanent impairment of specified bodily members, functions and organs. Where the loss of use is less than 100 percent, the amount of compensation is paid in proportion to the percentage loss of use.³

However, neither the Act nor the regulations specify the method by which the percentage of impairment shall be determined.⁴ The method used in making such determinations rests in the sound discretion of the Office.⁵ For consistent results and to ensure equal justice for all claimants, the Office has adopted and the Board has approved, the use of the appropriate edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*) as the uniform standard applicable to all claimants for determining the percentage of permanent impairment.⁶

In this case, a conflict of medical opinion was found between an Office medical adviser and Dr. Weiss as to the nature and extent of impairment due to appellant's injury of February 25, 1992. The case was referred to Dr. Fabiani to resolve the conflict. The Board notes, however, that Dr. Fabiani made no mention of the A.M.A., *Guides* in his March 5, 1996 report. Nor did he report any objective measurements by which a percentage of impairment could be determined. Dr. Fabiani simply stated that appellant had reached maximum medical improvement, that removal of the distal tuft would end appellant's hypersensitivity and that there was a three to four percent loss of function. He failed to address the other medical questions posed by the Office medical adviser, involving the range of motion, motor or sensory deficit and pain and any instability. The Board finds that Dr. Fabiani's report is insufficiently rationalized and incomplete to resolve the conflict in the medical opinion evidence. The Office should have clarified Dr. Fabiani's conclusions, pursuant to the instructions in its procedure manual.⁷ It was error on the part of the Office hearing representative, in her January 30, 1997 decision, to give weight to the opinion of an Office medical adviser after the conflict in medical opinion was declared.

¹ 5 U.S.C. § 8101 *et seq.*; 5 U.S.C. § 8107.

² 20 C.F.R. § 10.304.

³ 5 U.S.C. § 8107(c)(19).

⁴ *A. George Lampo*, 45 ECAB 441, 443 (1994).

⁵ *George E. Williams*, 44 ECAB 530, 532 (1993).

⁶ *James J. Hjort*, 45 ECAB 595, 599 (1994).

⁷ Federal (FECA) Procedure Manual, Part 3 -- Medical, *Medical Examinations*, 3.500(5b)(2) (October 1995).

Therefore, the Board will remand this case for the Office to further develop the evidence so that the conflict between the Office medical adviser's assessment of appellant's impairment and Dr. Weiss' opinion may be resolved.⁸

The January 30, 1997 decision of the Office of Workers' Compensation is set aside and the case is remanded for further proceedings consistent with this opinion.

Dated, Washington, D.C.
March 25, 1999

Michael J. Walsh
Chairman

George E. Rivers
Member

Michael E. Groom
Alternate Member

⁸ See *George S. Johnson*, 43 ECAB 712, 716 (1992) (finding that a conflict in medical opinion was not resolved because the opinion of the impartial medical specialist was insufficiently rationalized; thus, further remand was required); *Robert P. Johnson*, 43 ECAB 260, 266 (1991).